

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 14190 of 2004
with
SPECIAL CIVIL APPLICATION NO.14773 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

JAY KISAN FARMERS TENANCY AGRICULTURE CO-OP SOCIETY LTD
Versus
STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 14190 & 14773 of 2004
MR AJ PATEL for Petitioner No. 1
Mr.Desai, Asst.GOVERNMENT PLEADER for Respondent No. 1-2
UNSERVED-REFUSED (N) for Respondent No. 3-8
MR JC VYAS for Respondent No. 9-10

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 10/12/2004

ORAL JUDGEMENT

In SCA No.14190/04 Rule. Mr.Desai, Ld.AGP waives service of rule on behalf of State authorities and Mr.Vyas waives service of rule on behalf of respondent Nos 9 & 10 and respondent Nos 3 to 8 have refused to accept the notice and therefore they stand served. Rule in SCA No.14773/04 Mr.Desai, Ld.AGP waives service of rule on behalf of respondent Nos 1 and 10 and Mr.Patel waives service of rule on behalf of respondent No.9 and the other respondents are served but they have chosen not to appear. With the consent of learned advocates for parties matter is finally heard.

2. Upon hearing the learned advocates for parties, it appears that the issue involved in these petitions are covered by the decision of this court in the matter of Jayantilal Jethalal Soni vs State of Gujarat and others in SCA No.12574/04 wherein it has been observed at paras 7,8 and 9 as under:

"7. It appears that if a registered sale deed is executed by the holder of the land it confers the right pertaining to the land in question in favour of the petitioner of the land, and therefore, the rights pertaining to the land in question in normal circumstances can be said to have been acquired over the land in question for which recording is required to be made in the revenue record. It is also well settled that the revenue entries are having value only for fiscal purpose and more particularly for the purpose of recovery of revenue and it is neither confers any right or title over the property nor does it take away the right or title over the property which otherwise can not be available under the law. However, the question which arises for the consideration is if a sale deed is executed by the holder of the land which runs prima facie counter to the other statutory provisions of other enactment or is barred under the other enactment or it alters or disturbs the rights of the persons under the other enactment then can the revenue authority shut its eyes by ignoring such flagrant violation of such law or if it is considered what will be proper course to be followed. In case of Evergreen Apartment Coop.Housing Society (supra) this court has expressed the view that it is not open to the revenue authority exercising power under the code

to exercise power under the other enactment and to decide in respect to the breaches which are committed under the other enactment and thereby to uncertify the entry or to cancel the entry made in the revenue record. In case of "Janardhan D.Patel vs State of Gujarat"(supra) at para 11 it has been observed as under:

"If any such question arises the matter should be referred to the authority empowered to deal with under the said other enactment. For example, the validity of a transaction on the basis of section 63 of the Bombay Tenancy and Agricultural Lands Act, 1948 (the Tenancy Act for brief)is sought to be challenged that question can not be decided by revenue authorities in RTS proceedings. In such situation, the correct procedure to be followed would be to refer the matter to the authority empowered under the Tenancy Act for his decision. The necessary decision of that authority under the Tenancy Act is received, it would however not be open to the revenue authorities in RTS proceedings to decide that question.

8. Therefore, keeping in view of the aforesaid observations made by this court in the above referred judgment it appears that it would not be proper to hold that even if there are breaches under other enactments or such transfer is barred under the other enactments, the revenue authorities exercising power under the Code could have ignored the same for the purpose of recording the mutation. At the same time, the authorities exercising the power under the Code will have to exercise the jurisdiction within the limits of the statutory provisions of the Code. Therefore, on reconciling of both the aspects, it appears that in a case where the transfer of a land is made by registered sale deed and if the revenue authority prima facie is of the view that such transfer is either barred under the other enactment or is resulting into a breach of other enactment or is to resulting into adversely affecting the rights under the other enactments and consequently sale is prohibited then in that case the appropriate course for the revenue authority would be to record the entry for registered sale deed with the express observations that the registered sale deed is

prima facie in breach of the other enactment and simultaneously refer the matter to the competent authority under the other concerned enactment of which breach is committed and the entry should be made subject to final decision which may be taken by the competent authority under the other concerned enactment. This court is inclined to take such view because the one who may be bonafide purchaser or the one who is interested to purchase the property would normally rely upon the revenue entry for inquiring into the title and the possession of the property. If the entry is certified on the basis of registered sale deed as it is, without recording for aforesaid qualification or clarification, the resultant effect would be that it will not be made known to the either person interested or to the other party who may act upon revenue entry that the present transaction may be in breach of the other enactment and consequently it may result into not giving correct picture of the title or possession of the property in question in accordance with law. If the entry on the basis of the sale deed is not at all effected with the aforesaid qualification or without aforesaid qualification, it may also conversely mislead the public at large and also to those persons who act upon the revenue record because there will be no recording of such transactions of registered sale deed which has the effect of conferring the right on property unless it is prohibited by the relevant statute under the other enactment or unless such sale deed is declared as null and void by the competent authority or through the process known to law. Therefore, it can not be said that the authority exercising power under the Land Revenue Code has absolutely no jurisdiction to even prima facie consider the matter as to whether the breach of the other enactment is committed or not. At the most, it can be said that the authority exercising the power under the code has no power to conclude as to whether the breach of the other enactment by the impugned transfer or registered sale deed is made or not.

9. In view of the above, it can not be said that the orders passed by all the authorities on the basis that the Mamalatdar has not inquired into the aforesaid three aspects, namely, as to whether there is any breach of the provisions of the Prevention of Fragmentation Act or the

provisions of the Tenancy Act are absolutely without any basis and the orders can be maintained only to the extent that in case it is found by the Mamalatdar after remand that there are prima facie breach of other enactment by the transfer in question the revenue authority exercising power under the code may refer the matter to the appropriate authority under the other enactment or may relegate the affected party to resort to appropriate proceedings under the other enactment and the entry may be considered subject to the final outcome in the proceedings under the other enactment as observed hereinabove in earlier paragraphs."

3. The only distinguishing feature in the present matters is that the Civil Suit No 401/96 is preferred by the persons claiming the right on the basis of so called registered sale deed and the said suit is pending and the revenue authorities have cancelled the Entry Nos 4193 and 4048 and the said order cancelling the entries is confirmed by the State Govt in its revisional jurisdiction. In view of the decision rendered by this court in the matter of Jayantilal Jethalal Soni (supra) and the reasons recorded hereinabove, both the entries on the basis of registered sale deed are required to be restored to the revenue record with a clarification and qualification that the entries are subject to the final outcome of Civil Suit No 401/96 and therefore the orders passed by the revenue authorities to the extent of cancelling the entries in toto deserve to be quashed and set aside.

4. In view of the above, the orders passed by the revenue authorities, and its confirmation thereof by the State Govt, for cancelling the Entry Nos 4048 and 4193 are quashed and set aside with further direction that the Entry Nos 4048 and 4193 shall stand restored to the revenue record with clarification and qualification that both the entries are subject to the outcome of proceedings of Civil Suit No 401/96.

5. Both the petitions are partly allowed to the aforesaid extent. Rule in each petition is made absolute accordingly. Considering the facts and circumstances, there shall be no order as to costs.

